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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

In re Application of: ENDO, et al.
Application No. 09/667,769
Filed: September 22, 2000
Attorney Docket No.: 04329.2431
For: METHOD FOR DETERMINING A
SERVER COMPUTER WHICH CARRIED
OUT A PROCESS MOST RECENTLY, AND
HIGH AVAILABILITY COMPUTER
SYSTEM

DECISION ON PETITION TO
WITHDRAW HOLDING OF
ABANDONMENT
UNDER 37 CFR §1.181

This is a decision on the petition, filed September 3, 2004, requesting the Withdrawal of the Holding of Abandonment of the above-identified application under 37 CFR §1.181. This application was held abandoned for failure to file a timely response to the Office Action mailed on December 23, 2003. A Notice of Abandonment was mailed July 26, 2004.

The petition is **DISMISSED**

In support of the petition, Petitioner provides a statement that Applicants' representatives did not receive the above-mentioned Office Action in the mail, as well as a search that was made on the file jacket of the above-identified application. Petitioner also indicated that a phone inquiry was made by the Examiner on July 21, 2004 to confirm Applicants' intention to abandon. Applicants' representative checked the status of the file, and according to the law firm's docketing database there was no indication of a receipt of the Office Action mailed on December 23, 2003 from USPTO. However, since the application had been held abandoned a month earlier (to the phone inquiry date), Applicants were unable to prepare a response prior to abandonment.

Petitioner further encloses the following documents on which searches were made: a print-out of its mail room received records for the periods from December 23, 2003 through January 23, 2004, and a copy of the master docket records excerpt for March 23, 2004.

According to the MPEP §711.03(c)(I)(A), the showing required to establish non-receipt of an Office Action includes the following:

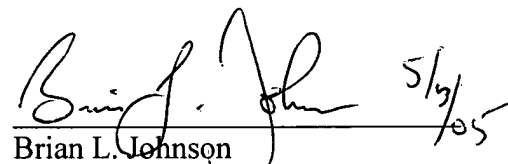
- (a) a statement from practitioner that the Office action was not received;
- (b) a statement from practitioner that the file jacket and docket records were searched;
- (c) a copy of the docket record at the address of record; and
- (d) a reference to the docket record in the practitioner's statement.

The petition fails to fully comply with requirement (c) set forth above. The evidence submitted has not overcome the presumption of receipt. In accordance with requirement (c) above, the docket report has to be from the address of record at the time the action was mailed and show all actions due by the entire firm at and around the due date for response, not counting any possible extensions of time.

There is no clear indication in the Petition that the submitted docket report is actually from the address of record at the time the action was mailed (Finnegan, Henderson, FaraBow, Garrett & Dunner LLP, 1300 I Street, NW, WASHINGTON DC 20005). The practitioner is therefore respectfully requested to clarify which address the docket report is from. Furthermore, while it is required that Petitioner provides a record of actions due by the entire firm **at and around** the due date, Petitioner only provided actions that were due on the sole due date.

Accordingly, the petition is **DISMISSED**.

If petitioner desires further review of this decision, petitioner should file a Request for Reconsideration within two (2) months of the mailing date of this decision. Telephone inquiries should be directed to the undersigned at (571) 272-3595.


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